



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/172957

PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 10, 2016, at Oshkosh, Wisconsin.

The issue for determination is whether the county agency correctly discontinued Petitioner's BadgerCare benefits for failing to cooperate with the child support agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was mailed a Notice of Decision dated March 7, 2016 that informed her that her BadgerCare+ eligibility would end as of April 1, 2106 for failing to cooperate with child support.
3. As of the date of the notice of discontinuance Petitioner had not submitted a good cause claim to child support though she had been sent the good cause forms necessary to request good cause.

4. Petitioner did submit a claim for good cause as of mid-March 2015. Her good cause claim is that the father of her son is in and out of jail and she wants to protect her son and herself from any possible physical or psychological harm.

DISCUSSION

As a condition of participation in the BadgerCare program, an applicant or recipient of BadgerCare+ is required to cooperate with the Child Support Agency (CSA) in establishing the paternity of any child born out of wedlock for whom BadgerCare+ is requested or received. BadgerCare+ Eligibility Handbook, § 5.2.1. The CSA determines if an individual is cooperating and notifies the economic support agency whether Medicaid benefits should be sanctioned. Good cause reasons for non-cooperation include threat of physical or emotional harm to the child or the parent and fitness of the individual as a parent. Medicaid Eligibility Handbook, sec. 8.3. The person can regain eligibility by cooperating with the CSA.

The applicable section of the BadgerCare Eligibility Handbook (BEH) are:

5.2.1 Introduction

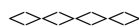
Unless the person is exempt or has [good cause](#) for refusal to cooperate (see [5.3](#)), each [applicant](#) /member that is referred, must, as a condition of eligibility, cooperate in:

1. Establishing the paternity of any child born out of wedlock for whom BadgerCare Plus is requested or received, and
2. Obtaining medical support for the applicant and for any child for whom BadgerCare Plus is requested or received.

Cooperation includes any relevant and necessary action to achieve the above. As a part of cooperation, the applicant may be required to:

1. Provide verbal or written information known to, possessed by, or reasonably obtainable by the applicant.
2. Appear as a witness at judicial or other hearings or proceedings.
3. Provide information, or attest to the lack of information, under penalty of perjury.
4. Pay to the CSA any court ordered medical support payments received directly from the absent parent after support has been assigned.
5. Attend office appointments as well as hearings and scheduled genetic tests.

Note: The applicant or member is only required to cooperate if the child under their care is eligible for benefits funded under Title 19 or is eligible for the Medicaid expansion category of the Children's Health Insurance Program (CHIP). If the child's BadgerCare Plus benefit is funded through any other source such as Title 21 Separate CHIP or GPR (i.e., state funds) the [caretaker relative](#) is not required to cooperate and can not be sanctioned for non cooperation. Check the Medical Status codes (See [51.1](#)) to determine funding source. The CSA will monitor the child's BadgerCare Plus funding source.
BEH, §5.2.1.



5.2.2 Failure to Cooperate

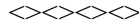
The CSA determines if there is non-cooperation for individuals required to cooperate. The IM agency determines if good cause exists (see 5.3). If there is a dispute, the CSA

makes the final determination of cooperation. The member remains ineligible until he or she cooperates, establishes good cause, or cooperation is no longer required.

The following individuals are not sanctioned for non cooperation:

Pregnant women,
Minors, and
Parents or caretaker relatives while the family is in a BadgerCare Plus Extension.

BEH, §5.2.2.



5.3.4 Circumstances

The IM agency must determine whether or not cooperation is against the best interests of the child. Cooperation is waived only if one of the following is true:

•The parent or caretaker's cooperation is reasonably anticipated to result in physical or emotional harm to one of the following:

- Child. This means that the child is so emotionally impaired, that his or her normal functioning is substantially affected.
- Parent or Caretaker. This means the impairment is of such a nature or degree that it reduces that person's capacity to adequately care for the child.

•At least one of the following circumstances exists, and it is reasonably anticipated that proceeding to establish paternity or secure support or both would be detrimental to the child:

- The child was conceived as a result of incest or sexual assault.
- A petition for the child's adoption has been filed with a court.
- The parent or caretaker is being assisted by a public or private social agency in deciding whether or not to terminate parental rights and this has not gone on for more than three months.

BEH, §5.3.4.

There is no dispute here as to the fact that Petitioner has not provided paternity information. She contends that this is because she is protecting herself and her son from physical and/or emotional harm at the hand of the father. She indicates that this is because he has been incarcerated for drug use and identity theft. No evidence has been submitted to support Petitioner's claim. *See BEH, §5.3.5.* Without that supporting evidence I am sustaining the discontinuance of BadgerCare+ for Petitioner for failing to cooperate with child support.

CONCLUSIONS OF LAW

That the agency correctly discontinued Petitioner's BadgerCare+ eligibility for failing to cooperate with child support.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 29, 2016.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability